

DOCKET FILE COPY ORIGINAL ORIGINAL

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

AUG 14 1998

In the Matter of )

Request for an Emergency Declaratory )

Ruling Filed Regarding Wireless )

Enhanced 911 Rulemaking Proceeding )

CC Docket No. 94-102

**COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.**

AirTouch Communications, Inc. ("AirTouch") hereby submits its comments in response to the above-referenced *Request for an Emergency Declaratory Ruling* ("Emergency Request") filed by the 9-1-1 Program Manager for the State of California. AirTouch is a CMRS provider with interests in cellular, paging, PCS and mobile satellite services, both domestic and international.

**INTRODUCTION**

As part of the Commission's efforts to improve the quality and reliability of wireless 911 service, the Commission adopted rules that required covered wireless carriers to implement enhanced 911 ("E911") services. Under the Commission's Phase I requirement for E911 services, covered carriers must be able to relay a caller's number and cell site location to the "any appropriate" Public Safety Answering Point ("PSAP").<sup>1</sup> This Phase I requirement would only be applied, however, if the administrator of the designated PSAP requests the

<sup>1</sup> *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-102, (rel. July 26, 1996) ("E911 Order") at ¶ 10.

Phase I services, the PSAP is capable of receiving and utilizing the data elements associated with the services, and a cost recovery mechanism is in place.<sup>2</sup> The Emergency Request seeks Commission clarification on a number of points that are crucial to the successful nationwide deployment of E911 services.

**I. CARRIERS SHOULD NOT BE REQUIRED TO DEPLOY WIRELESS E911 SERVICES UNLESS THE FCC ENSURES ADEQUATE LIMITATION FROM LIABILITY FOR THE PROVISION OF E911 SERVICES**

Despite the Commission's mandate that wireless carriers provide E911 services to subscribers and non-subscribers alike, the Commission declined to create a uniform, nationwide standard exempting those carriers from liability for the provision of such service.<sup>3</sup> The Commission reasoned that it was "premature and speculative for the Commission to establish a national standard of liability protection in order to achieve rapid deployment of wireless E911 systems."<sup>4</sup> Instead, the Commission indicated that it would rely on "state legislative bodies and state courts [to] develop[] their own solutions to liability issues."<sup>5</sup> States have not, however, "stepped up to the plate" in at least two states where AirTouch has substantial operations.

In California, for example, Assembly Bill 909 (Thomson/Runner) was introduced in the California legislature this year. Among other things, the bill would have indemnified wireless carriers for civil liability arising from carriers' provision of 911 services except where

---

<sup>2</sup> *Id.*

<sup>3</sup> *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Memorandum Opinion and Order, 12 FCC Rcd 22665, at ¶ 140.

<sup>4</sup> *Id.* at ¶ 137.

<sup>5</sup> *Id.* at ¶ 138.

the injury was the result of gross negligence or an intentional act. Despite broad-based support for the bill, it was blocked by special interest groups and was ultimately withdrawn. In Ohio, at the request of certain members of the Ohio legislature, a working group composed of industry and government entities is developing draft legislation that will establish a framework for 911 services in Ohio. The draft legislation includes a limitation of liability for acts or omissions in connection with the provision of 911 services. The working group is in its second year of hammering out the issues surrounding 911 service. Substantial debate regarding the complexities of implementing 911 service continue to delay formal introduction and passage of the Ohio 911 draft legislation.

Contrary to the Commission's hope and belief, states have not uniformly solved the liability issues associated with the provision of E911 services. As a result, carriers remain exposed to substantial liability arising from the technical complexities of implementing E911 mandates as explained in Section II. Moreover, the failure to resolve these issues only serves to delay implementation of E911 services. Now that the Commission has been presented with a specific situation calling for Commission action, it should move swiftly to remedy this situation by providing a uniform, nationwide standard governing immunity from liability for carriers that provide E911 services. Reliance upon individual states to act in this arena has only created a patchwork of inconsistent standards with carriers in some states receiving adequate immunities while carriers in other states are left exposed.<sup>6</sup> Carriers that operate in multiple states, such as AirTouch, are thus confronted with inconsistent liability risks. The goal of providing consistent nationwide E911 service will be fostered by establishing a

---

<sup>6</sup> In addition, the fact that some states have mobile operators' tariffs on file that include limitations on liability contributes to the inconsistency among state standards.

consistent standard limiting liability for the provision of that service.<sup>7</sup>

**II. IF THE COMMISSION DOES NOT PROVIDE IMMUNITY FROM LIABILITY, STATES SHOULD BE REQUIRED TO REIMBURSE CARRIERS FOR THE COST OF INSURANCE POLICIES COVERING E911 SERVICE AS A VALID AND NECESSARY COMPONENT OF COST RECOVERY**

The Commission conditioned the provision of E911 service upon the adoption of a “mechanism for the recovery of costs relating to the provision of [E911] services. . . .”<sup>8</sup> Should the Commission decide not to adopt a uniform rule establishing nationwide immunity from liability, the Commission should clarify that carriers will be permitted to recover the cost of insurance policies covering E911 service as a valid and necessary component of cost recovery. Carriers that operate in states without adequate limitations on liability face greatly increased liability exposure as a result of the FCC’s E911 mandates. Under the new regulations, carriers must provide E911 services to a larger pool of wireless callers – both subscribers and non-subscribers alike. Moreover, the added technical complexities associated with both Phase I and Phase II implementation<sup>9</sup> only increase the probability of system

---

<sup>7</sup> One feasible method of creating a nationwide limitation on liability, as proposed by the Cellular Telecommunications Industry Association, would be to allow carriers to file informational tariffs with the FCC setting forth the terms and conditions for the provision of E911 service to subscribers and non-subscribers, including carrier limitations on liability. *See* Petition for Reconsideration and Clarification of the Cellular Telecommunications Industry Association, filed Feb. 17, 1998, at 13. The filing of such tariffs would be a cost-efficient method of placing both subscribers and non-subscribers on notice of CMRS carriers’ liability with respect to E911 calls.

<sup>8</sup> E911 Order at ¶ 11.

<sup>9</sup> E911 systems, unlike basic 911 systems, are technically advanced networks which require carriers to provide the calling party number (ANI) and the cell site location (ALI or p-ANI) typically through a database dip using SS-7 signaling. In addition, the required interfaces with multiple PSAPs add to the complexities of providing E911 service.

malfunctions, notwithstanding competent development and operation of these systems by carriers and their vendors. As a result, if the FCC does not create a uniform limitation on liability, carriers must necessarily seek other mechanisms to insure against the increased liability exposure, again adding to the delay in furnishing E911 service. These insurance costs are a necessary component of E911 service provision and are thus appropriately reimbursed by states' cost recovery mechanisms.

By the 911 Program Manager's estimates, the cost of obtaining insurance for E911 calls in California (\$50 million annually based on a projection from one estimate) will dwarf the actual cost of providing service (unofficially estimated at \$15 million annually).<sup>10</sup> The size of these premiums highlights the very real risks faced by carriers who lack liability protection. If the FCC is unwilling to immunize carriers, states must either take actions to protect carriers or bear the costs.

### **III. THE COMMISSION'S SELECTIVE ROUTING REQUIREMENTS DO NOT PREEMPT EXISTING STATE ROUTING REQUIREMENTS**

The Commission's E911 rules require mobile operators to transmit a caller's Automatic Number Identification and the location of the base station or cell site receiving the 911 call to "any appropriate PSAP."<sup>11</sup> California state law currently requires cellular carriers to route all 911 calls to the "nearest appropriate California Highway Patrol communications center."<sup>12</sup> In addition to Highway Patrol PSAPs, California has over 400 non-Highway Patrol

---

<sup>10</sup> See Emergency Request at 2.

<sup>11</sup> E911 Order at ¶ 10.

<sup>12</sup> California Public Utilities Code § 2982.

PSAPs that could potentially be considered the “appropriate PSAP” in any particular case.<sup>13</sup> Indeed, recognizing that there may be instances in which a non-Highway Patrol PSAP may be the appropriate PSAP to assist a caller, AirTouch has participated in industry efforts to pass legislation that would permit selective routing to non-Highway Patrol PSAPs in California. That legislation, which also included a limitation on liability as discussed above, was defeated by special interest groups. Accordingly, because the FCC did not explicitly preempt existing state laws regarding 911 call routing requirements, existing state routing requirements remain in effect.<sup>14</sup>

## CONCLUSION

AirTouch recognizes the important role that mobile phones and a reliable E911 service can fill in providing access to emergency services. In order to promote the rapid nationwide deployment of efficient and effective E911 services, the Commission should promptly adopt a uniform nationwide rule to limit wireless carriers’ liability for the provision of E911 services. If the Commission declines to adopt a uniform limitation of liability provision, the Commission should explicitly state that carriers are entitled to recover the costs of insuring against such liability from state cost recovery mechanisms. Finally, the Commission should clarify that it

---

<sup>13</sup> For the trial described in the Emergency Request, the 911 Program Manager requested that AirTouch and other participating CMRS providers “selectively route” calls to non-Highway Patrol PSAPs. While AirTouch appreciates the public benefit sought to be achieved by routing E911 calls to the local PSAP presumably most able to respond quickly, AirTouch would be in the untenable position of violating state law and further increasing its liability exposure if it were to comply.

<sup>14</sup> See, e.g., *Detariffing of Billing and Collection Services*, 1 FCC Rcd 445 at ¶ 12 (where order did not discuss federal preemption of intrastate billing and collection services, such services were not preempted).

has not preempted state regulations regarding selective routing of E911 calls.

Respectfully submitted,

AirTouch Communications, Inc.

Joyce H. Jones  
Kim Mahoney

AirTouch Communications, Inc.  
One California Street, 29th Floor  
San Francisco, CA 94111

August 14, 1998

By: Pamela Riley  
Pamela J. Riley  
David A. Gross

AirTouch Communications, Inc.  
1818 N Street, NW  
Washington, D.C. 20036  
(202) 293-3800

Certificate of Service

I, Belinda Kwong, hereby certify that a copy of the foregoing Comments of AirTouch Communications, Inc. was sent by hand or United States first-class mail, postage prepaid, on this the 14<sup>th</sup> day of August, 1998 to the party listed below.

Belinda M. Kwong  
Belinda M. Kwong  
August 14, 1998

Leah A. Senitte  
911 Program Manager  
Emergency Telephone System Section  
Telecommunications Division  
Department of General Services  
State of California  
601 Sequoia Pacific Boulevard  
Sacramento, CA 95814